

Yellow

[REDACTED]
[REDACTED]
[REDACTED]
FEB 23 1998

Employer Identification Number: [REDACTED]
Key District: Western (Los Angeles)
Form: 1120
Tax Years: [REDACTED]

Dear Applicant:

This letter constitutes a final adverse ruling with respect to your claim of exemption from federal income taxation under section 501(c)(4) of the Internal Revenue Code.

We make our ruling for the following reason(s):

Only your members and members of other associations residing within the [REDACTED] community are permitted unrestricted access to the facilities within the [REDACTED] community. You still restrict the general public from gaining access to your facilities. Thus you are not a homeowners association as described in Rev. Rul. 74-99, 1974-1 C.B. 131 as clarified by Rev. Rul. 80-63, 1980-1 C.B. 116.

The Code and the regulations issued thereunder require that you file federal income tax returns. Based upon the financial information that you furnished, you should file returns on the form and for the tax years indicated above within 30 days from the date of this letter with your key District Director for exempt organization matters, shown above, unless you request and your key District Director grants an extension of time to file the returns. You should file returns for later tax years with the appropriate service center indicated in the instructions for those returns.

If you have any questions concerning the reasons for this ruling, please contact the person whose name and telephone number appear in the heading of this letter. You should address

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questions concerning the filing of returns to your key District Director.

Sincerely,

Chief, Exempt Organizations
Technical Branch 4

CP:EO:TY

CP:EO:TY

2/23/98

2-23-98

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Contact Person: [REDACTED]

Telephone Number: [REDACTED]

In Reference to: [REDACTED]

Date:

OCT 30 1997

Employer Identification Number: [REDACTED]
Key District: Western

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(4). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

You were incorporated on [REDACTED] under the laws of the state of [REDACTED], in part, for the purpose of bringing about civic betterments and social improvements by providing for the preservation, management, maintenance, and care of the architecture and appearance of a planned residential development known as [REDACTED].

[REDACTED] is a separate and distinct geographical area containing approximately [REDACTED] acres, located in an unincorporated area of [REDACTED] County in the state of [REDACTED]. It is one of the largest gated communities in [REDACTED] with a total planned residential development of [REDACTED] homes, that will eventually house [REDACTED] people. At present there are [REDACTED] completed homes housing about [REDACTED] people. Approximately [REDACTED] homeowners are your members.

[REDACTED] has its own local fire station, general store, school, two golf courses, equestrian center, tennis camp and a future-planned business and professional services complex, all within its borders. None of these facilities are maintained by you.

You maintain parks, streets, trails, slopes and other open areas. You employ an independent patrol service to monitor the community.

Many public events are held within [REDACTED]. These events include [REDACTED] symphony concerts, Rotary Club concerts, a Fourth of July parade and various youth and social events sponsored by one of the local social clubs within the community.

The entrance to a substantial portion of [REDACTED] is gained through three separate limited access gates located at the north, south, and west areas of [REDACTED]. The south and west gates are attended by a private security guard, and all three gates are attended by an electronic gate access system. The north gate is unmanned except for major holidays and major emergencies.

All community residents and their guests have the right to pass through the limited access gates. A member of the general public may enter the community but will be asked his/her purpose for entering the community prior to being allowed through the manned access gates. For example, persons using the tennis camp, equestrian center, general store, golf club or other facilities will be expected to state where they are going. The golf club, tennis club and equestrian center will forward a list to the gate attendant of club members or those persons expected at their locations or otherwise authorized to visit. Such person will be given access to the entire community once admitted through the access gates.

People entering through the gates for soccer games and other public events are required to state their purpose in entering the community and will be allowed access through the gates. People entering the community to look at new homes will be required to indicate their purpose in entering the community and may be asked to sign a sheet indicating where they will be looking at new homes.

Section 501(c)(4) of the Code provides for exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, and no part of the net earnings inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. Social welfare in this context includes the purpose of bringing about civic betterment and social improvement.

Rev. Rul. 72-102, 1972-1 C.B. 149, holds that certain non-profit organizations of a type normally called homeowners associations, which are formed to administer and enforce covenants for preserving the architecture and appearance of a housing development and to maintain streets, sidewalks, and other non-residential, noncommercial properties in a development of the

type normally owned and maintained by a municipal government, may qualify for exemption under section 501(c)(4) of the Code.

Rev. Rul. 74-99, 1974-1 C.B. 131, modified Rev. Rul. 72-102. A homeowners association, to qualify for exemption under section 501(c)(4) of the Code, (1) must serve a "community" which bears a reasonable recognizable relationship to an area ordinarily identified as governmental, (2) it must not conduct activities directed to the exterior maintenance of private residences, and (3) the common areas or facilities it owns and maintains must be for the use and enjoyment of the general public.

Rev. Rul. 75-286, 1975-2 C.B. 210, provides that a nonprofit organization with membership limited to the residents and business operators within a city block and formed to preserve and beautify the public areas in the block, thereby benefiting the community as a whole as well as enhancing the members' property rights, may qualify for exemption under section 501(c)(4).

Rev. Rul. 80-63, 1980-1 C.B. 116, provides, in addition to the requirements of Rev. Rul. 72-102 and 74-99, that Rev. Rul. 74-99 does not embrace a minimum of a certain number of homeowners and if the organization's activities benefit a community, it may still qualify for exemption.

Rancho Sante Fe Association v. United States, 84-2 USTC ¶9536, concerns whether a homeowners association was entitled to exemption as a social welfare organization under section 501(c)(4). This association was formed to enforce protective covenants designed to preserve the character of the community of Rancho Sante Fe, which is not a gated community. The association consists of about 3,000 members that are property owners within the Rancho Sante Fe development which is governed by the protective covenants. The association owns parklands and open space, playgrounds and athletic fields, a public parking lot, community clubhouse, and commercial areas that are open to the general public. The association owns a golf course and tennis courts that is restricted to use by members. The court held that the association is a social welfare organization described in section 501(c)(4) since it performs the functions of a governmental entity, including providing recreational facilities, and bringing about civic and social improvements for the community. Since the association benefits the entire community, the court found that there was no further requirement that the association's benefits, such as access to its golf course and tennis courts, be made available to the general public in order for the association to be considered operating for the promotion of social welfare.

Flat Top Lake Association v. United States, 868 F.2d 108 (4th Cir. 1989) concerns a homeowners association surrounding an artificial lake that sought to restrict its facilities to its members. The organization was seeking exemption under section 501(c)(4) of the Code. The Court held that the organization did not serve as a community for purposes of section 501(c)(4) because it operated for the benefit of its members.

A homeowners association is described in section 501(c)(4) as a social welfare organization if it satisfies the requirements of Rev. Rul. 74-99 as clarified by Rev. Rul. 80-63. If the organization restricts the common areas to its members, then the organization would not be described in section 501(c)(4), because it would be not operating for the benefit of the public.

Based on the information provided, you provide for the preservation, management, maintenance and care of the architectural appearance of certain properties of the [REDACTED] community, which includes the maintenance of parks, streets, fences, trails, slopes, conservation areas, and other open areas. A gate surrounds the whole community. You do not permit anyone to enter the community without written consent from organizations within the community or having your guards document the location of the individual entering the [REDACTED] community. Thus you restrict access to the common areas and you do not satisfy the requirements described in Rev. Rul. 74-99 as clarified by Rev. Rul. 80-63.

You are not similar to the organization described in the Rancho Sante Fe court case because you limit access to your community. The organization described in Rancho Sante Fe permitted the general public to enter its community.

Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

[REDACTED]

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key district office. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

Attn: [REDACTED]

1111 Constitution Ave, N.W.
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

[REDACTED]
[REDACTED]
Chief, Exempt Organizations
Technical Branch 4